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Federal Communications Commission
Office of Secretary

February 7, 1997

AILEEN A. PISCIOTTA

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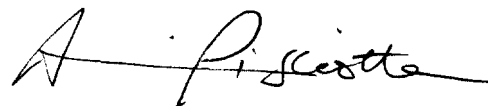
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Notice of Proposed Rulemaking, IB Docket No. 96-26

Dear Mr. Caton:

As a courtesy to Videsh Sanchar Nigam Limited (India), enclosed please find an five copies of their Initial Response in the above-referenced docket. The copy marked "original" is a facsimile; the original document is being sent directly to the Commission.

Sincerely,



Aileen A. Pisciotto

Enclosures

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के. पी. तिवारी
मुख्य महाप्रबंधक (नेटवर्क)

K. P. TIWARI

CHIEF GENERAL MANAGER (NW)



विदेश संचार निगम लिमिटेड
(भारत सरकार का उद्यम)

Videsh Sanchar Nigam Limited
(A GOVT. OF INDIA ENTERPRISE)

ORIGINAL

No.HQ/01-206/97-TG

6th February 1997.

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The Office of the Secretary
Federal Communications Commission
1919 M.Street, N.W.
Room 222
Washington, D.C. 203554
UNITED STATES OF AMERICA

Federal Communications Commission
Office of Secretary

FAX 1 202 418 2818

Sub: NPRM of Benchmark settlement rates for
International Telephone Service between USA and
other countries. (IB Docket No.96-261 dt.19th
December 1996).

Sir,

Please find enclosed herewith the initial response of
Videsh Sanchar Nigam Limited (VSNL), India on the above mentioned
subject for your consideration. A confirmatory copy by post is
also being sent for your record purposes.

Yours faithfully,

(K.P.TIWARI)

CHIEF GENERAL MANAGER (NW)

Encl: as above

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INITIAL RESPONSE

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the matter of :

International Settlement Rates IB Docket no. 96-261

INITIAL RESPONSE OF VIDESH SANCHAR NIGAM LIMITED (VSNL), INDIA

I. INTRODUCTION

- (a) Videsh sanchar Nigam Limited (VSNL) is submitting these Initial Comments to the proposal of the Federal Communications Commission (FCC) pursuant to the Notice of Proposed Rule Making (NPRM) for adopting new rules concerning international accounting rate benchmark. VSNL is the international carrier authorized by the Department of Telecommunications (DOT) which interconnects Indian domestic telephone network with international carriers. DOT operates the domestic telephone network in India. The interest of VSNL is therefore vitally affected by the NPRM.
- (b) By the NPRM/FCC proposes reduction in the accounting rates through establishment of cost based accounting rate bench marks. FCC is proposing to set maximum accounting rate that US carriers are authorized to pay if a foreign carrier's existing or proposed accounting rate exceeds the FCC determined benchmark. FCC concern apparently stems from the fact that US consumers pay over six times as much for an international call as for domestic long distance call. FCC believes that lowering of settlement rates would help lower prices the consumers pay. FCC also expresses its concern about imbalance in the net outpayments that the US carriers have to make to foreign carriers and intends to reduce the net outpayments from US to foreign carriers which in FCCs opinion are principally due to the higher accounting rates currently in existence. FCC percceives that the remedy for reducing the net out payments is to move to cost based accounting rate benchmark.

II. FCC'S JURISDICTION

- (a) At the very outset VSNL submits that FCC does not have jurisdiction to impose changes in accounting rates unilaterally. Under the International Telecommunications Union (ITU) Treaty accounting rates are to be determined by mutual agreement, unilateral determination being against the spirit of ITU Treaty. In fact Article 6.2.1 of the International Telecommunication Regulations (Melbourne) 1988 clearly stipulates that "For each applicable services in a given relation administrations shall by mutual agreement established and revise accounting rates to be applied between them in accordance with the provisions of (these Regulations) and taking into account relevant CCITT recommendations and relevant cost trends"

VSNL therefore submits that under the International Law, accounting rates are to be set bilaterally. As such FCC's jurisdiction over foreign or international communication is limited to the US side of the service and in keeping with the principle of Comity of Nations and International Law, FCC does not have the authority to prescribe international settlement rates.

- (b) VSNL respectfully submits that FCC's NPRM would amount to assumption of jurisdiction to regulate foreign end of international networks as well, as indeed this would be the result of NPRM, whereby FCC would be deciding what the accounting rates would be charged by foreign carriers for terminating the US originated traffic in such countries. It is respectfully submitted that FCC cannot assume such plenary jurisdiction over the matters which are within the jurisdiction of foreign administrations. VSNL submits that as a matter of Comity of Nations, the matter of accounting rates being in the realm of International Policy would be best resolved by taking into account the different regulatory frameworks operating in diverse foreign jurisdictions which cannot be the matter of unilateral solution by FCC under the NPRM.
- (c) VSNL submits that FCC's proposed unilateral action apart from being in excess of FCC's jurisdiction, would result in aggravating the existing international settlement mechanism. VSNL submits that FCC should act through appropriate international organization viz. ITU. The issues which arise out of NPRM and the concern which FCC seeks to address are more appropriately dealt with by the ITU and not by FCC. As would be submitted hereafter the principal reason for settlement outpayments from US carriers being disproportionately high is due to the traffic imbalances which currently exist between US and some other countries. These traffic imbalances are a direct result of the aggressive policies pursued by the US carriers in the international market and backed by FCC. VSNL submits that the only beneficiaries of the NPRM would be the US carriers themselves and FCC cannot in these circumstances be considered to be acting impartially or fairly. As will be submitted hereafter, US traffic imbalances continue to increase due to the promotion of services like call back, refile, home country direct and other policies of US carriers. US carriers find it difficult to negotiate accounting rate reductions with other foreign carriers and administrations in view of their own aggressive marketing policies. VSNL submits that FCC should take up the issues facing the US carriers with ITU which would involve discussion with all countries rather than press forward with NPRM which would have the effect of infringing the sovereign rights of other countries to determine how they develop their own telecommunication systems. VSNL would willingly participate in such multilateral discussions and address the issues raised by FCC through the NPRM. In these circumstances, FCC's unilateral action would not be in the interest of

International Comity or development of telecommunication industry. In any event VSNL submits that FCC's NPRM which is mainly driven by the imbalances in the US settlement fails to address the real issues which result in such imbalances viz. tariff and traffic dissymmetries. VSNL further submits that the NPRM does not take into consideration that the international accounting rates and settlement system is multilateral in nature and unilateral action by US can at best address only one of the aspects of this complex and multilateral issue and cannot furnish rational and equitable solutions. VSNL would like to emphasise that there is a definite co relation between the Total Accounting rate (TAR) and the Access Fee for terminating a call into a network which varies from network to network and country to country which is dependent on several factors. FCC by itself would not be capable of addressing this complex issue.

III. OBJECTIONS ON MERITS

- (a) VSNL submits that it need to be appreciated that the basic reason why US carriers are net outpayers in the accounting rate settlement is due to the traffic dissymmetries that prevail. It is VSNL's belief that the net outpayer situation of US Carrier as far as India is not due to the dissymmetries in collection rates at the two ends of the traffic namely the US and the Indian. In fact VSNL submit that the standard collection rates for calls from India to US and vice versa at US and Indian end are not very different. VSNL observes that collection rate at the US end have rather gone up (as would be seen from the table annexed as annexure 1) inspite of reduction in settlement rates over a period of time.
- (b) VSNL submits that the aggressive market practices of US carriers namely pursuing of the call back and country direct services and refiling of traffic have resulted in the US Carrier levels of out bound traffic from US for the purpose of settlements being much higher. US Carriers have always aggressively pursued policies with a view to capturing higher market shares of international telecommunication business and in a bid to get more return traffic from foreign networks/administration in accordance with the proportionate return principle prescribed by FCC. Resellers authorized by FCC have also played a major part in hubbing the traffic from various countries via US through the facilities of established US carriers. FCC should be aware that call back services have emanated from resellers due to availability of very low rates from US carriers which are even below settlement rates in several cases. Due to these policies pursued by US carriers which have FCC's backing for these services such as country direct, call back etc have increased tremendously during the last few years and consequently out bound US traffic minutes have also similarly grown. FCC has always supported US carriers' right to offer these services

which as aforesaid has resulted in aggravating the imbalance of traffic between US and foreign carriers. FCC now, after having authorized and supported services by US carriers which have caused the US outpayments to increase, cannot now complain about the increase in the deficit and seek to impose unilateral solutions by fixing the bench marks for accounting rates. VSNL submits that in the light of FCC's own actions of the past, the present NPRM is wholly unwarranted.

- (c) VSNL submits that US carriers have exploited for several years the dissymmetry in the tariffs. It is this exploitation of the tariff dissymmetry that has resulted in the traffic dissymmetry and not the other way round. The traffic imbalances result in imbalances in settlement payments which continue to grow due to the policies of US carriers which aggressively offer home direct services, call back, calling card and refile. VSNL submits that US is not the only country which is required to make outpayment for international telecommunications, VSNL also makes outpayments to a number of countries but does not impose its views unilaterally on administration receiving settlement outpayments from VSNL.
- (d) VSNL submits that it is not correct that the US settlement deficit is due to the accounting rates not being related to costs. As stated above the real issue is the traffic imbalance and not cost related accounting rates. The traffic imbalances result apart from the aggressive marketing policies of US carriers from a host of other factors depending on each country. There is, VSNL submits, no causal connection between accounting rates and traffic dissymmetries. Mere reduction in the accounting rates would not in VSNL's opinion cause dissymmetries in traffic to disappear as there are several other factors which are highly complex and country specific such as the population, level of economic development, the state of the national network etc.
- (e) VSNL submits that the net revenue/profits of US carriers continue to increase despite increase in outpayments from US even at current accounting rates. This shows that there is a hefty retention per minute to US carriers as the standard collection rate at US end are much higher than the settlement rate. VSNL submits that FCC should concern itself with the per minute margin of US carriers as this is a matter wholly within its jurisdiction and would help FCC to achieve its aim of lowering the collection rate charged by US carriers to US residents.

- (f) VSNL submits that bringing accounting rates in line with the costs is a matter wholly within the prerogative of the regulatory authorities of sovereign nations. The regulatory authorities decide the issues after taking into consideration a number of factors. It is not possible to equate, as has been done by FCC, that above cost accounting rate means subsidization of profits of foreign monopolies. VSNL submits that reduction in accounting rates would not necessarily lead to competition being introduced in other jurisdictions. Whether or not competition should be introduced is a matter which each country would decide and is a matter of complex policy.
- (g) VSNL submits that the costing methodology proposed to be adopted by FCC in NPRM which is based only on TSLRIC (Total Services Long Run Incremental Cost) for setting the bench marks is thoroughly inappropriate. VSNL submits that allocation of costs is a matter which is very complex and involves several social, political and economic issue and there can be no objective solution to this problem of allocation of joint and common costs. VSNL submits that FCC's unilateral attempt to solve bilateral accounting rates based on the TSLRIC methodology is wholly improper. As stated earlier, VSNL submits that this needs deliberations through a multilateral forum such as ITU, which VSNL believes is the only appropriate forum for providing solution for a fair and equitable accounting rate system.
- (h) VSNL believes that if the accounting rate is to reflect the real cost, then the TAR should not be split on a 50:50 basis. The split on the TAR should be on the basis of actual cost for US carriers terminating the US traffic in the US. As such US carriers should get a settlement rate based on their cost of delivering the traffic within US and not 50% of TAR.

IV. CONCLUSION

- (a) VSNL believes that the prevailing rate system has served the traditional telephone market well for so many years. Therefore, any change in the existing accounting rate has to be very carefully structured. VSNL submits that international telephone services have developed on the principle of collaboration and co-operation amongst international telephone carriers. This principle of collaboration and co-operation has been recognised in the ITU constitution. If it is believed that the telephone markets have changed from this principle of collaboration to the principle of competition, the best method to bring the accounting rate system in step with the change in the international

telecommunication market is through the ITU. Any move to replace the current existing rates by cost oriented accounting rates in terms of the ITU recommendation D-140 has to be done within the ITU framework and not on the basis of the inappropriate methodology to be unilaterally decided upon by FCC. VSNL recognizes that there may be a need to change the accounting rate system founded on the paradigm of jointly provided services. However, any such reform must necessarily reduce the price to the end consumer by creating a competitive market and environment. As submitted hereinabove VSNL believes that FCC's NPRM will not necessarily achieve this objective. In this connection, VSNL therefore strongly believes that any solution to the accounting rate problem facing FCC has to be through the ITU mechanism which is the only appropriate organization to find a conclusive multilateral solution fair to all countries and carriers in keeping with the comity of nations. VSNL would in this connection like to draw attention to a note circulated by the Secretary General of ITU, Dr. Pekka Tarjanne who has invited comments for Study Group 3 for its meetings to begin in May this year. VSNL submits that as the forum most appropriate for dealing with this issue viz. the ITU is to commence deliberations in the very near future, there is no need for a unilateral action by FCC at present.

- (b) In conclusion VSNL believes that FCC should not adopt the proposal outlined in the NPRM to set accounting rate bench marks, having the effect of unilaterally reducing accounting rates, especially in view of the fact that ITU itself is seized of this matter to address the international settlement issues within its framework where all the diverse interests and issues will be considered in a proper international perspective.

Place : Mumbai
Dated : Feb. 6th, 1997.

for

VSNL

ANNEX-1

INTERNATIONAL TELEPHONE TARIFF STUDY

COUNTRY : U.S.A. - INDIA

		YEAR (FIG. IN US\$/PM)				
		1991	1992	1993	1994	1995
COLLECTION CHARGE						
1. PEAK - USA TO INDIA		2.84	2.84	2.67	2.67	2.37
INDIA TO USA		2.64	2.31	2.46	2.39	2.31
DIFFERENCE		0.20	0.53	0.21	0.28	0.06
2. OFF PEAK - USA TO INDIA		2.14	2.14	1.50	2.04	1.76
INDIA TO USA		2.64	2.31	2.46	2.39	1.93
DIFFERENCE		-0.50	-0.17	-0.98	-0.35	-0.16
SETTLEMENT RATE (IN BOTH DIRECTIONS)		1.13	1.00	0.95	0.90	0.90
RETENTION						
1. PEAK - BY USA		1.71	1.84	1.72	1.77	1.47
BY INDIA		1.51	1.31	1.51	1.49	1.41
DIFFERENCE		0.20	0.53	0.21	0.28	0.06
2. OFF PEAK - BY USA		1.01	1.14	0.55	1.14	0.86
BY INDIA		1.51	1.31	1.51	1.49	1.03
DIFFERENCE		-0.50	-0.17	-0.96	-0.35	-0.16

SOURCE :- ITU

(FILE TARIFUS.WK3/13)

CERTIFICATE OF SERVICE

I, Roberta Schrock, hereby certify that I have served a copy of the foregoing "Initial Response of Videsh Sanchar Nigam Limited (VSNL), India" on this 7th day of February, 1997, upon the following parties by hand delivery:

Donald Gips
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 827
Washington, D.C. 20554

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Chief, Telecommunications Division, International Bureau
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Roberta Schrock